IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1626 OF 1979

Bombay Pulp and Paper Manufacturing P.Ltd. ..Plaintiffs

Vs.

M.S.E.B. and Ors. ..Defendants

None for the plaintiffs

Mr.K.H.Mody for the defendants and plaintiffs to counter claim

CORAM : S.U.KAMDAR, J
DATED : 16TH MARCH, 2006

P.C.:

1. The suit is already dismissed for non-prosecution. However, the defendants are seeking to enforce the counter claim. The claim is based on an agreement entered into between the parties and the clause 27(c) and 31(e) of the said agreement interalia provides for payment of interest for non-payment of amount of electricity dues.

2. It is the case of the plaintiffs to the counter claim that the defendants to the counter claim by filing a letter of undertaking dt. 13.7.79 agreed to pay electricity charges of Rs.5,11,352/- in monthly instalments of Rs.25,000/- each per month commencing from 13.7.79 and the subsequent instalments were to be paid on each and every succeeding month thereafter. It was further provided that in an event of default in making payment of any one instalment on the part of defendants to the counter claim, the entire amount will be due and payable by the defendants to the counter claim to the plaintiff to the counter claim.

3. The main suit is filed by the defendants to the counter claim for challenging the said letter of undertaking dated 13.7.79 and restraining the plaintiffs to the counter claim from enforcing the same. Pursuant to the interim order, the defendants to the counter claim paid the entire amount of arrears of Rs.5,11,352/- by monthly instalments in accordance with the said order. It is now the balance claim made by the plaintiffs to

the counter claim for the interest amount @ 18% for first 3 months and 24% for the subsequent months for delay in payment of the said interest amount.

4. The defendants to the counter claim has filed no reply to the counter claim. The learned counsel for the plaintiffs to the counter claim has tendered an affidavit of evidence of one Nanjangud L.Harisarvotramrao giving the evidence that there is a default in making payment of the aforesaid. In so far as undertaking and agreement is concerned, there is no dispute since the same are relied upon by the defendants to the counter claim in the suit which has been preferred by them for challenging the said undertaking. The said suit having been dismissed, the claim of the plaintiffs to the counter claim for the interest amount has been crystalised. In view thereof, the counter claim of the plaintiff for Rs.67,395.87 is decreed with further interest @ 6% p.a. from the date of counter claim till payment and or realisation. Counter claim decreed accordingly.